
CHAPTER: Fair Lending

SECTION: Home Mortgage Disclosure Act

Section 215

Introduction

The Home Mortgage Disclosure Act (HMDA) was enacted by the Congress in 1975 and is implemented by the Federal Reserve Board's Regulation C (12 CFR Part 203). The period of 1988 through 1992 saw substantial changes to HMDA. Especially significant were the amendments included in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Coverage was expanded in the FIRREA amendments to include many independent non-depository mortgage lenders, in addition to the previously covered banks, savings associations, and credit unions. Coverage of independent mortgage bankers was further expanded effective January 1, 1993, with the implementation of amendments contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).

HMDA grew out of public concern over credit shortages in certain urban neighborhoods. The Congress believed that some financial institutions had contributed to the decline of some geographic areas by their failure to provide adequate home financing to qualified applicants on reasonable terms and conditions. Thus, one purpose of HMDA and Regulation C is to provide the public with information that will help show whether financial institutions are serving the housing credit needs of the neighborhoods and communities in which they are located. A second purpose is to aid public officials in distributing public investments to attract private investments to areas where they are needed. The FIRREA amendments of 1989 created a third purpose by introducing a fair-lending aspect to HMDA that requires the collection and disclosure of data about applicant and borrower characteristics as a way of identifying disparate lending patterns that need to be reviewed in conjunction with agency fair lending efforts.

As the name implies, HMDA is a disclosure law that relies upon public scrutiny for its effectiveness. It does not prohibit any specific activity of lenders, and it does not establish a quota system of mortgage loans to be made in any MSA or other geographic area (an MSA refers to a "metropolitan statistical area" or "primary metropolitan statistical area" as defined by the U.S. Office of Management and Budget).

Financial institutions must report data regarding loan originations, applications that do not result in an origination (for example denials and withdrawals), as well as information concerning loan purchases. HMDA also requires most lenders to report the race, gender, and gross annual income of mortgage applicants and borrowers. Additionally, lenders must identify the class of purchaser for mortgage loans that they sell, and most lenders have the option of indicating the reasons for their decisions not to grant credit. (National banks and those lenders regulated by the Office of Thrift Supervision must provide the reasons under agency regulations.)

Regulation C requires financial institutions to report lending data to their supervisory agencies on a loan-by-loan and application-by-application basis by way of a "register" reporting format. The supervisory agencies, through the Federal Financial Institutions Examination Council (FFIEC), compile this information in an individual disclosure statement for each financial institution and in aggregate reports for all covered financial institutions within each MSA. In addition, the FFIEC produces other aggregate reports that show lending patterns by median age of homes and by the central city or non-central city location of the property. These FFIEC disclosure statements and reports are available to the public at a central depository located in each MSA, and may also be obtained directly from the FFIEC. The individual FFIEC disclosure statements are also available at the respective financial institutions.

Approved-FFIEC



Applicability

The regulation covers two categories of financial institutions. The first category is a depository institution—a bank, savings association, or a credit union—that originated, in the preceding calendar year, a first-lien home purchase loan (including refinancing of such loans) on a one-to-four family dwelling if: (1) the institution is federally insured or regulated; (2) the loan is federally guaranteed, insured, or supplemented; or (3) the institution intended to sell the loan to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. The second category is a for-profit, non-depository mortgage lending institution. A non-depository mortgage lending institution is covered if, in the preceding calendar year, ten percent or more of its loan origination volume, measured in dollars, consisted of home purchase loans, including refinancings of such loans. For the purposes of this discussion and the examination procedures, the term “financial institution” will signify both a depository and non-depository institution; “depository institution” will signify “a bank, savings association, or credit union”; and “non-depository institution” will signify a “for-profit mortgage lending institution (other than a bank, savings association, or credit union).”

The definition of non-depository institution applies to majority-owned mortgage lending subsidiaries of depository institutions and, since 1990, to independent mortgage companies. Mortgage lending subsidiaries of bank holding companies, savings and loan holding companies, and savings and loan service corporations have been covered by HMDA since 1988. Mortgage lending subsidiaries are treated as distinct entities from their parents and must prepare separate reports to be filed with their parent's supervisory agency.

Though a financial institution may fall within one of these two categories, it is exempt from the regulation if it did not have a home or branch office in an MSA at the end of the previous calendar year. For depository institutions, a branch office is an office approved as a branch by a federal or state supervisory agency (excluding ATMs). A non-depository institution is considered to have a branch office in an MSA if it took applications for, originated, or purchased five or more home pur-

chase or home improvement loans on properties located in that MSA in the previous calendar year.

Depository institutions also are exempt from HMDA if, at the end of the previous calendar year, they had \$29 million or less in assets. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 amended HMDA by increasing the HMDA reporting exemption based on asset size for depository institutions and providing that the asset exemption will be adjusted annually to reflect changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW). While the exemption from HMDA data collection in 1999 is \$29 million, the exemption will be adjusted annually to reflect future changes in the CPIW. The Federal Reserve Board will publish the exemption amount in the Federal Register on an annual basis.

A non-depository institution is also exempt if its assets, when combined with those of any parent institution, are less than \$10 million and it originated fewer than 100 home purchase loans (including refinancing of such loans) in the preceding calendar year.

Finally, the Federal Reserve Board may exempt from Regulation C state-chartered or state-licensed financial institutions if they are covered by a substantially similar state law that contains adequate provision for enforcement by the state. As of January 1, 1999, no exemptions were in effect.

Compilation of Loan Data

For each calendar year, a financial institution must report data regarding its originations and purchases of home purchase and home improvement loans. Loans secured by real estate but made for purposes other than home purchase, home improvement, or refinancing are not reported. Data must also be given for loan applications that did not result in originations. Specifically, reporting is required for loan denials, withdrawn applications, applications that are approved but not accepted, and application files that are closed for incompleteness.

A home purchase loan is defined by Regulation C as a loan secured by a dwelling and made for the

purpose of purchasing that (or another) dwelling. A dwelling is a residential structure that may or may not be attached to real property, and covers one-to-four family dwellings, including individual condominium or cooperative units and mobile or manufactured homes, as well as multifamily dwellings housing five or more families.

A home improvement loan is defined as one that is for the purpose of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, and that is classified by the financial institution as a home improvement loan. Home improvement loans may be secured or unsecured.

Financial institutions may, at their option, report home equity credit lines as home improvement or home purchase loans in the year that the line is established if a part of the line is identified by the consumer at the time of application (or when the account is opened) as being for home improvement or home purchase purposes. Only that portion of the line which the borrower or applicant indicates will be for home improvement or home purchase purposes is reported.

The regulation requires financial institutions to report data so as to identify the following general loan types: conventional, FHA insured, VA guaranteed, and Farmers Home Administration (FmHA) insured loans. In addition, financial institutions are required to identify the purpose (home purchase, home improvement, refinancing, or multi-family) and the amount of the loan or loan application, and whether the property relating to the loan or loan application is to be owner-occupied as a principal dwelling.

Certain geographic location information must be reported by financial institutions for loans on, and applications for, properties in any MSA where they have a home or branch office. This geographic information is optional for loans on properties located outside these MSAs or outside any MSA, except in the case of large financial institutions subject to additional requirements under the Community Reinvestment Act (CRA), as described below. The information consists of the MSA number, state and county codes, and the census tract number of the property to which the loan or loan

application relates. Beginning with data for the 1992 calendar year, lenders have been required to use the census tract numbers from the U.S. Census Bureau's Census Tract/Street Index for 1990, the CPH-3 map series for the 1990 census, or equivalent 1990 census data from the Census Bureau or from a private publisher.

Institutions subject to the CRA and HMDA will collect and report geographic information for all loans and applications, not just for loans and applications relating to property in MSAs where the institution has a home or branch office. The requirement for geographic information also applies to property located outside any MSA. The data collection requirements go into effect for calendar year 1998, with institutions required to report the data in 1999. Under the CRA, banks or savings associations that have assets of \$250 million or more, or are subsidiaries of a holding company with total banking and thrift assets of \$1 billion or more must collect and report this data.

In addition, financial institutions must report data regarding the race or national origin, gender, and gross annual income of applicants for loans originated or applied for, but only optionally for loans purchased. This applicant information is optional for depository institutions that had \$30 million or less in assets at the end of the previous calendar year. Different rules apply for institutions regulated by the FDIC and the OCC. Information regarding the race or national origin and the gender of the borrower or applicant must be requested by the lender (except for applications taken entirely by telephone). For all applications submitted in person, the lender is required to note the data on the basis of visual observation or surname if the applicant chooses not to provide the information. Regulation C contains a model form that can be used for the collection of data on race or national origin and gender. Alternatively, the form used to obtain monitoring information under §202.13 of the Federal Reserve Board's Regulation B (Equal Credit Opportunity) may be used.

If a financial institution originates or purchases a loan and then sells it in the same calendar year, it must report the type of entity that purchased the loan. Except in the case of large secondary market purchasers such as Fannie Mae and Freddie Mac,

the exact purchaser would not be identified. For example, a financial institution would indicate that it had sold a loan to a bank, without identifying the particular bank. Finally, some financial institutions may, at their option, report the reasons for denying a loan application. National banks and those lenders regulated by the Office of Thrift Supervision are required to provide this information.

A financial institution should not report loan data for:

- loans originated or purchased by the financial institution acting as trustee or in some other fiduciary capacity;
- loans on unimproved land;
- construction or bridge loans and other temporary financing (but construction-permanent loans must be reported);
- the purchase of an interest in a pool of loans (such as mortgage-participation certificates);
- the purchase of mortgage loan servicing rights, or
- loans secured by real estate, but made for purposes other than home purchase, home improvement, or refinancing.

Disclosure and Reporting

Financial institutions are required to record data regarding each application for, and each origination and purchase of, home purchase loans and home improvement loans (including refinancings) on a Loan/Application Register, also known as the HMDA-LAR. Transactions are to be reported for the year in which a final action was taken on the application. If a loan application is pending at the end of the calendar year, it will be reported on the HMDA-LAR for the following year, when the final disposition is made. Loans originated or purchased during the calendar year must be reported even if they subsequently have been sold within the same year.

The HMDA-LAR is accompanied by a listing of codes to be used for each entry on the form. Detailed instructions and guidance on the require-

ments for the register are contained in Appendix A to Regulation C. Additional information is available in the FFIEC publication, "A Guide to HMDA Reporting-Getting it Right," updated in March 1998 as well as the Regulation C Staff Commentary dated in December 1998, effective January 1, 1999.

Financial institutions have flexibility in determining how to maintain the HMDA-LAR since the entries need not be grouped in any prescribed fashion. For example, a financial institution could record home purchase loans on one HMDA-LAR and home improvement loans on another; alternatively, both types of loans could be reported on one register. Similarly, separate registers may be kept at each branch office, or a single register could be maintained at a centralized location for the entire financial institution.

Financial institutions should collect and maintain the required information on their HMDA-LARs on an ongoing basis. As of January 1, 1996, financial institutions are required to update their HMDA-LAR quarterly.

For each calendar year, a financial institution must submit to its supervisory agency its HMDA-LAR, accompanied by a Transmittal Sheet. As of January 1, 1996, unless it has 25 or fewer reportable transactions, a financial institution is required to submit its data in automated form (e.g. diskette, magnetic tape, etc.). This will streamline the reporting process and reduce the potential of key-entry errors. For registers submitted in paper form, two copies must be mailed to the financial institution's supervisory agency. For both automated and hard-copy submissions, the layout of the register that is used must conform exactly to that of the HMDA-LAR form published by the Federal Reserve Board as part of Appendix A to Regulation C.

The HMDA-LAR must be submitted to the financial institution's supervisory agency by March 1 following the calendar year covered by the data. The FFIEC will then produce a disclosure statement for each financial institution, cross-tabulating the individual loan data in various groupings. These individual disclosure statements will be mailed to the financial institutions.

Amendments to HMDA affecting the disclosure of data were included in the Housing and Community Development Act of 1992. A financial institution must make its disclosure statement available to the public at its home office within three business days of receipt from the FFIEC. Within ten business days of receipt, an institution must make its disclosure statement available to the public in at least one branch office in each additional MSA where it has offices.

Also, a financial institution must make its loan application register available to the public after modifying it to delete the following fields: application or loan number, date application received, and date of action taken. These modifications are required to protect the privacy interests of applicants and borrowers. The modified HMDA-LARs for the previous calendar year must be publicly available by March 31 for requests received on or before March 1, and within 30 days for requests received after March 1; this requirement applies to data for 1992 and subsequent calendar years.

A complete copy of a financial institution's disclosure statement and modified HMDA-LAR must be made available at the financial institution's home office; the disclosure statement and modified register at branch offices need only contain data for the MSA in which the branch is located.

The FFIEC also produces aggregate tables to illustrate the lending activity of all covered financial institutions with branches in each MSA. The FFIEC sends the individual disclosure statements and the aggregate tables to a central depository, such as a public library, in each MSA. A list of depositories is available from the FFIEC.

A financial institution must retain its full HMDA-LAR for at least three years for examination purposes. It must also be prepared to make the modified HMDA-LAR available for three years and each FFIEC disclosure statement available for five years. Financial institutions may impose reasonable fees for costs incurred in providing or reproducing the data for public release.

Finally, financial institutions must post a notice at their home office, and at each branch in an MSA,

to advise the public of the availability of its HMDA data.

Enforcement

As set forth in Section 305 of HMDA, compliance with the act and regulation is enforced by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of Thrift Supervision, and the U.S. Department of Housing and Urban Development. Administrative sanctions, including civil money penalties, may be imposed by these supervisory agencies.

An error in compiling or recording loan data is not a violation of the act or the regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adopted to avoid such errors.

Examination Objectives

1. To determine if the financial institution complies with the reporting and disclosure requirements of the act and regulation.
2. To determine the adequacy of the financial institution's policies, procedures, practices and internal controls to ensure compliance with the act and regulation.
3. To determine the accuracy and timeliness of the financial institution's submitted HMDA-LAR.

Examination Procedures**Applicability***Depository Institutions*

1. Determine whether the depository institution meets the criteria below. If all criteria (1.a.-1.d.) are met, then the depository institution is subject to the requirements of HMDA and Regulation C.
 - a. The depository institution originated in the preceding calendar year at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one-to-four family dwelling [§203.2(e)(1)]; and
 - b. The depository institution:
 - is a federally insured or regulated institution [§203.2(e)(1)(i)]; or
 - originated a mortgage loan (reference procedure 1.a.) that was insured, guaranteed, or supplemented by a federal agency [§203.2(e)(1)(ii)]; or
 - originated a mortgage loan (reference procedure 1.a.) intending to sell it to FNMA or FHLMC [§203.2(e)(1)(iii)]; and
 - c. The depository institution had either a home or a branch office in an MSA on December 31 of the preceding calendar year [§203.3(a)(1)(i)];
 - d. The depository institution had assets at or below the asset threshold established by the Federal Reserve Board.

Note: The dollar threshold amount can vary each year depending on the year to year changes in the CPIW. For 1999, the asset threshold is \$29 million as of December 31, 1998. [§203.3(a)(1)(ii)].

Non-depository Institutions

2. Determine whether the depository institution has a majority-owned mortgage subsidiary that meets the criteria below. If all criteria 2.a.-2.c.) are met, then the subsidiary is subject to the requirements of HMDA and Regulation C.
 - a. The majority-owned mortgage subsidiary is a for-profit institution and, in the preceding calendar year, had home purchase loan originations, including refinancings of home purchase loans, equal to or exceeding 10 percent of its total loan originations measured in dollars [§203.2(e)(2)]; and
 - b. The majority-owned mortgage subsidiary either:
 - had a home or branch office in an MSA as of December 31 of the previous year [§203.3(a)(2)(i)], or
 - received applications for, originated, or purchased five or more home purchase or home improvement loans on property located in an MSA in the preceding calendar year [§203.2(c)(2)]; and
 - c. The majority-owned mortgage subsidiary either:
 - had total assets (when combined with the assets of the parent corporation) exceeding \$10 million on the previous December 31, or
 - originated 100 or more home purchase loans, including refinancings of home purchase loans, in the preceding calendar year [§203.3(a)(2)(ii)].

If HMDA and Regulation C are applicable, then the following examination procedures should be performed separately for the depository institution and any of its majority-owned mortgage subsidiaries. A separate checklist should be completed for each institution subject to HMDA and Regulation C.

3. Determine whether there were any mergers or acquisitions since January 1 of the preceding calendar year

- a. Determine whether all required HMDA data for the acquired financial institutions were reported separately or in consolidation. Examination procedures that follow concerning accuracy and disclosure also apply to an acquired financial institution's data, even if separately reported.

Compilation of Loan Data

4. Determine, through a review of written policies, internal controls, the HMDA Loan Application Register (HMDA-LAR), and discussions with management, whether the financial institution has compiled home mortgage disclosure information in accordance with §203.4(a-d).

- a. Determine how the financial institution ensures that the home mortgage disclosure information is properly compiled and disclosed. Consider:

- Whether the financial institution has assigned one of its officers responsibility for oversight.
- Whether the Board of Directors has established an independent review of the policies, procedures, and HMDA data to ensure compliance and accuracy, and is advised each year of the accuracy and timeliness of the financial institution's data submissions.
- Whether the financial institution performs a self-analysis of the accuracy of the HMDA data, and its timeliness, and whether the Board of Directors is informed of the results of the analysis. Obtain a detailed description of the analysis performed.
- Whether the financial institution performs HMDA-LAR volume analysis from year-to-year to detect increases or decreases in activity for possible omissions of data.

- Whether the financial institution maintains documentation for those loans it packages and sells to other institutions.

- Whether the HMDA-LAR is updated within 30 days after the end of each calendar quarter beginning January 1, 1996.

- b. Determine how management ensures that affected financial institution personnel are aware of the requirements of the Act. Consider:

- Whether the individuals who have been assigned responsibility for data-entry receive appropriate training in the completion of the HMDA-LAR and receive copies of all HMDA instructional materials from the FFIEC and the appropriate supervisory agency in a timely manner.
- Whether these individuals have been provided copies of Regulation C, Instructions for Completion of the HMDA-LAR (Appendix A), the Staff Commentary to Regulation C, and the FFIEC's Guide to HMDA Reporting in a timely manner.
- Whether these individuals know whom to contact, at the financial institution or their supervisory agency, if they have questions not answered by the written materials.
- Whether the financial institution's loan officers (including loan officers in the commercial loan department who may handle loan applications for multi-family or mixed-use properties) are informed of the reporting requirements necessary to assemble the information.
- Whether the financial institution's loan officers are familiar with the disclosure statements that will be produced from the data and cognizant of the ramifications for the financial institution if the data are wrong.

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- Whether appropriate documentation of the information that has been entered on the HMDA-LAR is maintained.
 - Whether data are collected at various branches, and if so, whether the appropriate personnel are sufficiently trained to ensure that all branches are reporting data under the same guidelines.
 - Whether a numbering system is in place to assign unique identification numbers in codes to loan files.
 - Whether the depository institution has some mechanism of internal controls to ensure that the data are captured accurately and consistently.
 - The type of controls that have been established to ensure that separation of duties exists (e.g. data entry, review, oversight, approval).
- c. Determine what procedures the institution has put in place to comply with the requirement to submit data in machine-readable form and whether the institution has some mechanism in place to ensure the accuracy of the data that are submitted in machine-readable form.
- d. Determine if policies, procedures and training are adequate, on an ongoing basis, to ensure compliance with the Home Mortgage Disclosure Act.
5. Verify that the financial institution accurately compiled home mortgage disclosure information in the prescribed categories by testing a sample of loans and applications.
- The review of the HMDA-LAR for already-submitted data should include a sample of the applications represented on the HMDA-LAR to verify the accuracy of each entry. A sample of the current year's data should also be reviewed. The samples may comprise:
- Approved and denied transactions subject to HMDA that are sampled for Regulations B and Z
 - Housing-related purchased loans
 - Withdrawn housing related loan applications
- Disclosure and Reporting*
6. Determine whether the financial institution has satisfied the following reporting and disclosure requirements:
- a. The financial institution submitted its HMDA-LAR to the appropriate supervisory agency no later than March 1 following the calendar year for which the data are compiled and maintains the HMDA-LAR for at least three years thereafter. [§203.5(a)]
- Note:* Financial institutions that report twenty- five or fewer entries on their HMDA-LAR may collect and report HMDA data in a paper form. Any financial institution opting to submit its data in such a manner must send two copies that are typed or computer printed. They must use the format of the HMDA-LAR, but need not use the form itself.
- b. The financial institution makes its FFIEC disclosure statement available to the public at its home office no later than three business days after receiving its statement from the FFIEC; and, makes the statement available to the public in at least one branch office (in each additional MSA where the financial institution has offices) within ten business days after receiving the disclosure statement from the FFIEC. [§203.5(b)]
 - c. The financial institution's modified HMDA-LAR has been made available to the public by March 31 for requests received on or before March 1, and within 30 days for a request received after March 1. [§203.5(c)]
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- d. The financial institution has policies and procedures to ensure its modified HMDA-LAR and its disclosure statement are available to the public for three and five years, respectively. [§203.5(d)]
 - e. The financial institution has posted a general notice about the availability of its disclosure statement in the lobby of its home office and any physical branch offices located in an MSA. [§203.5(e)]
7. Determine whether an officer of the financial institution signed the HMDA-LAR transmittal sheet certifying the accuracy of the data contained in the register. (Appendix A.III.B)
- Note:* If the HMDA-LAR was submitted in an automated format, this signature should be retained on file, at the institution.
8. Review the financial institution's last disclosure statement, HMDA-LAR, and any applicable correspondence from the regulatory agency, such as notices of noncompliance. Determine what errors occurred during the previous reporting period. If errors did occur, determine what steps the financial institution took to correct and/or prevent such errors in the future.
9. Determine if the financial institution has the necessary tools to compile the geographic information. [§ 203.4(a)(6) and Appendix A]
- a. Determine if the financial institution uses the U.S. Census Bureau's Census Tract/Street Index for 1990, the Census Bureau's 1990 Census Tract Outline Maps, equivalent materials available from the Census Bureau or from a private publisher, or an automated geocoding system in order to obtain the proper census tract numbers.
 - b. If the financial institution relies on outside assistance to obtain the census tract numbers (for example, private "geocoding" services or real estate appraisals), verify that adequate procedures are in place to ensure that the census tract numbers are obtained in instances where they are not provided by the outside source. For example, if the financial institution usually uses property appraisals to determine census tract numbers, how does it obtain this information if an appraisal is not received, such as in cases where a loan application is denied before an appraisal is made?
 - c. Verify that the financial institution has taken steps to ensure that the provider of outside services is using the appropriate 1990 Census Bureau data.
 - d. Verify that the financial institution uses current MSA definitions to determine the appropriate MSA numbers and boundaries. MSA definitions and numbers (and state and county codes) are available from the supervisory agency, the "FIPS PUB 8-5, Metropolitan Statistical Areas" (as updated periodically), or "A Guide to HMDA Reporting, Getting it Right."
 - e. For banks and savings associations not meeting the small bank definition under the CRA, verify that accurate data are also collected on the location of every property, not just located in the MSA(s) in which the institution has a home or branch office or outside any MSA.